

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
TBR USA, INC.,) CASE NO. 06-60429 JPK
) Chapter 11
Debtor.)

ORDER ON VERIFIED MOTION TO EXTEND OBJECTION
DEADLINE AND CONTINUE CONFIRMATION HEARING ["MOTION"]

On August 21, 2006, creditors John Worstell and The Worstell Business Trust filed the above-designated Motion. The Motion requests rescheduling of the confirmation hearing on the debtor's Chapter 11 plan from September 7, 2006 to a date 45 days from that date. The Motion states that counsel for Fifth Third Bank and the United States Trustee's Office have indicated that they have no objection to the request made by the Motion; however, the Motion states that counsel for the debtor has declined to extend the requested extension/continuance.

11 U.S.C. § 1129(e) states essentially in simple English (as opposed to the verbiage of the statute) that in a small business case, the Court must conduct a confirmation hearing "not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3)". This latter statute states that the confirmation hearing may be extended beyond a date which is 45 days after the date of filing of the plan only if three conditions are satisfied, including the condition stated in sub-paragraph (A) of that statute that "the debtor . . . demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time". There is no evidence in the record that this condition has been satisfied, and there is nothing stated in the Motion with respect to that condition. In fact, the statute is written in terms which may be construed as providing standing only to the debtor to request an extension of the holding of the confirmation hearing beyond the 45th day after the filing of the plan – although the Court does not at this time definitively construe the statute to this extent.

Due to personal commitments, the Court has already rescheduled the confirmation hearing from September 7, 2006 to September 11, 2006 at 1:00 P.M. – a date which is the last date upon which the confirmation hearing can be held pursuant to 11 U.S.C. § 1129(e).

IT IS ORDERED that the foregoing Motion is denied.

Dated at Hammond, Indiana on August 22, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor
US Trustee
Mark Werling
David Blaskovich
Gordon Gouveia
All Creditors
All Parties-in-Interest